

REMARKS

Claims 1, 3, 8-13, 18-21, 24 and 26-37 are pending in the present application. Claims 1, 8-11, 12, 18-21, 24, 26, 29, 30 and 33-36 have been rejected under 35 U.S.C. §102(e) as being anticipated by, or in the alternative, under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 6,024,089 to Wallace et al. ("Wallace") in view of U.S. Patent No. 5,121,113 to Kedge et al. ("Kedge"). Claims 3, 13, 27, 28, 31 and 32 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Wallace and Kedge in view of U.S. Pat. No. 5,885,245 to Lynch et al. ("Lynch"). Applicants respectfully traverse these rejections.

CLAIM REJECTIONS

Each of the independent claims require the programmable medical device to comprise a routine that is responsive to a status of the programmable medical device **without user input** for **selectively displaying only those entry keys required by the status**. As previously discussed, the disclosure of Wallace does not anticipate or render obvious these limitations. Moreover, in the present Office Action as well as the prior office actions, the Examiner has acknowledged that "Wallace does not teach that the buttons are selectively displayed WITHOUT USER INPUT." Accordingly, since Wallace does not disclose selectively displaying buttons without user input, Applicants respectfully submit that Wallace cannot anticipate Applicants' claims.

With respect to the 35 U.S.C. §103(a) rejections, the Examiner has taken the position that Kedge teaches a control system that selectively displays buttons in response to the status of the device, without user input. This is not a correct reading of the disclosure of Kedge.

Notwithstanding the fact that neither Wallace nor Kedge disclose "a routine, responsive to a status of the programmable medical device without user input, for generating a display of a plurality of entry keys," (which Applicants discuss in detail below), Applicants first assert that

the Examiner has failed to present a *prima facie* case of obviousness. As such, the rejection is not only invalid, but is also improper.

It is the burden of the Patent and Trademark Office to establish a *prima facie* case of obviousness when rejecting claims under 35 U.S.C. §103. In re Reuter, 210 USPQ.2d 249 (CCPA 1981). To establish a *prima facie* case of obviousness, three basic criteria must be met: first, there must be some suggestion, incentive or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; second, there must be a reasonable expectation of success; and third, the prior art references must teach or suggest all the claim limitations. See In re Geiger, 815 F.2d 686, 688 (Fed. Cir. 1988). Obviousness cannot be established by combining the teachings of a reference to produce the claimed invention, absent some teaching or suggestion supporting the combination of the references. ACS v. Montefiore Hospital Systems, Inc., 221 USPQ 929, 933 (Fed. Cir. 1984). Furthermore, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the Applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ.2d 1438 (Fed. Cir. 1991).

Here, the disclosure of Wallace pertains solely to programming and viewing alarms in *medical devices*. In contrast, the disclosure of Kedge pertains solely to remote control panels for controlling "*electrophotographic printers, copiers, and like devices*." These references each provide for solving vastly different problems and each have vastly different applications. As is seen on the face of the respective patents, none of the art classes or fields of search for the two patents overlap because they relate to such different technologies. Accordingly, Applicants respectfully submit that since there is no teaching or suggestion to combine the disclosures of Wallace and Kedge, the Examiner has failed to present a *prima facie* case of obviousness. For

this reason the Applicants respectfully submit that this rejection is improper and should be withdrawn.

Notwithstanding, Applicants assert that even if the two references were properly combinable, they do not render Applicants' claims unpatentable as being obvious over the prior art. In the Office Action the Examiner stated that Kedge "teaches a control system that selectively displays buttons in response to the status of the device, without user input. (col. 5, lines 9-17)." This is inaccurate. In its specification Kedge does not disclose selectively displaying buttons in response to the status of the device, and without user input. More specifically, **no buttons are displayed (selectively or otherwise) in the display of Kedge.**

Rather, the control panel of Kedge provides an LCD display 30, and a plurality of:

"keys or buttons 32, 34, 36, 38, 40, 42, 46 and 48. These buttons are available for access or activation by the local operator and control various functions in the panel and the associated device or apparatus. Some of the buttons have dedicated and nonvariable functions, such as buttons 40, 42, 46 and 48. Other buttons, such as buttons 32, 34, 36 and 38 have functions which depend upon the present status of the associated device. These are known as "soft-keys" because the function of the buttons or keys is determined by software in the associated apparatus. As will be described in more detail later, the LCD 30 may be controlled to indicate the function of the soft-keys so that the operator knows what the current function for each key is when it is activated." (Col. 5, lines 3-17.)

The "soft-keys," however, are not selectively displayed. Rather, they are mechanical buttons which are present at all times on the control panel, and not the display, of Kedge. It is only text above the "soft-keys" which is on the display and which changes. Accordingly, Kedge does not render Applicants' claims obvious because each of the claims generally require "generating a display of a plurality of entry keys disposed in a spatial configuration," and further "selectively display[ing] on the display device only those entry keys required by the status."

To clarify for the Examiner, the only aspect of Kedge which is able to be adjusted or selectively displayed on the display device "icons, text strings, screens, and multiple screens, or cartoons, which can be displayed on the LCD." (Col. 2, lines 55-57.) The LCD display,

however, does not display a plurality of entry keys as required by Applicants' claims. Instead, all of the "keys" of Kedge are mechanically fixed on the control panel. While Kedge discloses that "soft-keys 32, 34, 36 and 38 are described by the text of strings 54, 56 and 58 on the LCD 30," all of the "soft-keys" are mechanical buttons that are always present on the control panel of Kedge. (Col. 5, lines 48-50.) Accordingly, even if Wallace was properly combinable with Kedge, which Applicants respectfully assert it is not, the combination of these references does not disclose or render obvious Applicants' claim limitations.

Moreover, Applicants also state that Wallace and Kedge do not disclose a routine which is responsive to a status of the medical device without user input **during each phase of control or programming**. This feature of Applicants' invention is extremely useful for simplified programming, especially where the programming of a medical device takes place over several screen iterations and at distinct intervals. Contrary to the Examiner's assertions, there is no disclosure in Wallace or Kedge to indicate such a responsive routine occurs during all phases of programming.

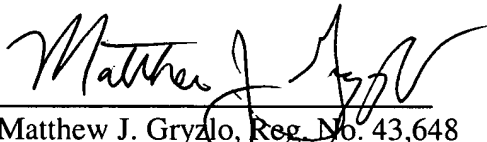
CONCLUSION

In view of the foregoing remarks, it is submitted this application is in condition for allowance. Such action is respectfully requested. Further, in view of the protracted prosecution and numerous searches conducted by the Examiner, the Applicants request the Examiner to contact the undersigned if the Examiner has any questions concerning this Reply or if it will expedite the progress of this application.

Respectfully submitted,

Date: November 26, 2003

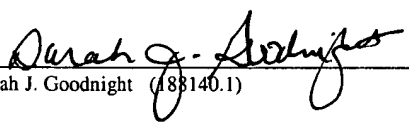
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